

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
W/S Back River Neck Rd. 750' * ZONING COMMISSIONER
S of Bay Avenue * OF BALTIMORE COUNTY
1220 Back River Neck Road * CASE # 93-162-SPH
15th Election District *
5th Councilmanic *
Roscoe Phipps *
Petitioner *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property located at 1220 Back River Neck Road in the Middle River section of Baltimore County. The Petitioner/property owner, Roscoe Phipps, seeks approval of a nonconforming use at the subject site and to alter the rear (west side) of the existing building.

Appearing at the public hearing held for this case was the property owner's agent, Andy Anderson. Mr. Anderson explained that Mr. Phipps was ill and unable to attend the hearing. No other interested persons or Protestants were present.

The subject property is .78 acres in area and is presently zoned R.C.20. It is improved with an existing dwelling on the front portion of the property and an existing machine shop building and related structures on the north and west portions of the site. Mr. Anderson explained that the property owner operates a machine shop business on the property which manufactures bearings and other machine parts for the defense and aerospace industry. Currently, there are five employees of the business. Further, the existing dwelling is used as a residence and is presently leased to a tenant.

As to the nonconforming use, Mr. Anderson submitted a copy of the relevant portion of the 1984 comprehensive zoning map adopted by the Baltimore

County Council on or about November 13, 1984. That map shows that the subject property was zoned M.L.R. at that time. This zoning classification permits a number of manufacturing uses which would include the present use, pursuant to Section 241.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). Thus, the business operated lawfully under the existing zoning classification in 1984. Subsequently, the Baltimore County Council rezoned the property to R.C.20 during the 1988 cyclical zoning process. Thus, the subject Petition requests designation of the property nonconforming, as said use was legitimate as recently as the 1984 zoning maps.

Relevant regulations concerning nonconforming uses are found in Section 104 of the B.C.Z.R. This section has evolved since the adoption of zoning in Baltimore County in 1945 and the implementation of the Comprehensive Zoning Regulations in 1955. The present statute provides that a nonconforming use may continue provided that same has not been abandoned or discontinued. Further, the nature of the nonconforming use cannot be altered. If a change in use is found to be different from the original use, the current use of the property cannot be considered nonconforming (see McKemy v. Baltimore County, 39 Md. App. 257, 385 A2d 96 (1978)).

The uncontradicted testimony and evidence presented was that the subject property has been in its present use for some years. In fact, Mr. Anderson testified that the machine shop use has existed for at least the past 13 years based upon his personal knowledge of the site. Further, there has been no change to the nature of the use and, therefore, it is clear that the use is nonconforming in that it has continued uninterruptedly and unchanged since the change to the zoning classification of the property which makes such use impermissible.

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The second issue for consideration as contained within the Petition is the request that alterations to the rear (west side) of the existing building be approved. Testimony and evidence presented was that the footprint of the building will not be changed. Presently, an existing concrete floor is located to the rear of the existing machine shop building. The Petitioner proposes enclosing same so as to provide a storage area that is protected from the elements. According to the site plan submitted, the area to be enclosed is 1450 sq. ft., less than 25% of the total area of the building. Section 104.3 of the B.C.Z.R. provides that no nonconforming building shall be enlarged more than 25% of the ground floor area. In that the proposed improvement is less than that threshold figure, the proposed expansion shall be approved.

This property lies within close proximity to the Chesapeake Bay and is, therefore, subject to the Chesapeake Bay Critical Area legislation found within Section 500.14 of the B.C.Z.R.

In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management must submit recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Areas requirements to:

- 1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- 2) Conserve fish, wildlife, and plant habitat; and
- 3) Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

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These recommendations have not, as yet, been submitted, as noted in the Zoning Plans Advisory Committee comments from the Department of Environmental Protection and Resource Management (D.E.P.R.M.) dated December 29, 1992. (copy attached hereto). When D.E.P.R.M.'s final comments are completed, they shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of the Department of Environmental Protection and Resource Management.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 29th day of January 1993 that, pursuant to the Petition for Special Hearing, approval of a nonconforming use at the subject site be and is hereby granted; and,

IT IS FURTHER ORDERED that alterations to the rear (west side) of the existing building, pursuant to Section 104.3 of the B.C.Z.R., in accordance with Petitioner's Exhibit No. 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

-4-

2. Compliance with the Department of Environmental Protection and Resource Management recommendations to be submitted upon completion of their review of this matter.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmm

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

(410) 887-4386

January 28, 1993

Mr. Roscoe Phipps
t/a Middle River Machine Co.
1220 Back River Neck Road
Baltimore, Maryland 21221

RE: Petition for Special Hearing
Case No. 93-162-SPH
1220 Back River Neck Road

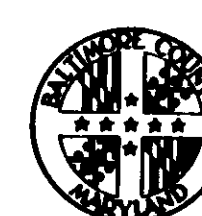
Dear Mr. Phipps:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
Lawrence E. Schmidt
Zoning Commissioner

LES:mmm
att.
cc: Mr. Andy Anderson
1201 Keywood Court
Baltimore, Md. 21222



Petition for Special Hearing
93-162-SPH
to the Zoning Commissioner of Baltimore County
for the property located at 1220 Back River Neck Rd.
which is presently zoned RC20 (PREV.MLR)

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve TO APPROVE A NON-CONFORMING USE AND ALTERATIONS TO THE REAR OR WEST SIDE OF EXISTING BUILDING.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchased/Lessor:

(Type or Print Name)

Signature

Address

City

State

Zip

(Type or Print Name)

Signature

Address

City

State

Zip

Legal Owner(s):
Roscoe Phipps
(Type or Print Name)
Signature
Address
City
State
Zip

1220 Back River Neck Rd. 391-4670

Baltimore Md. 21221

Owners Agent: Andy Anderson

1201 Keywood Ct. 21222 477-3760

OFFICIAL USE ONLY

RECEIVED DATE: 11-12-92

RECEIVED BY: LG

RECEIVED DATE: 11-12-92

ZONING DESCRIPTION FOR
1220 BACK RIVER NECK ROAD

BEGINNING AT A POINT ON THE WEST SIDE OF
BACK RIVER NECK ROAD WHICH IS 70' WIDE
APPROXIMATELY 750' SOUTH OF THE CENTERLINE
OF THE NEAREST IMPROVED INTERSECTING STREET
BAY AVENUE WHICH IS 50' WIDE. THENCE THE
FOLLOWING COURSES AND DISTANCES:

METES AND BOUNDS:

S.79 E. A DISTANCE OF 216.75ft.

N.10 20' E. 139.25ft.

S.78 47' E. 232.1ft.

S.3 09' W. 140.9ft. TO THE PLACE OF BEGINNING

PROPERTY OTHERWISE IDENTIFIED AS:

1220 BACK RIVER NECK ROAD

LOCATED IN THE 15th DISTRICT OF BALTIMORE COUNTY

RECORDED IN LIBER 5529 FOLIO 377

ORDER RECEIVED FOR FILING
Date 1/28/93
By [Signature]

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166

166

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1326 Date of Posting: 12/15/92

Posted for: Special Hearing

Petitioner: Roscoe Phipps

Location of property: W/S (1220) Back River Neck Rd, 750' S of Bay Ave

Location of Sign: Front, 100' W of, on property of Phipps

Remarks:

Posted by: [Signature] Date of return: 12/18/92

Number of Signs: 1

receipt

Date: 11-16-92

PHIPPS
1220 Back River Rd

93-162-SPH

Special Hearing \$250.00

[all other info already in data base]

04A0480043MCHRC \$250.00
Please Make Checks Payable To: Baltimore County

Cashier Validation

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/10/1992

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/10/1992

THE JEFFERSONIAN,
S. Zeke Orlov
Publisher

\$61.02

receipt

Date: 11/12/92

040 - SPECIAL HEARING (OTHER) \$61.02

04A0480056MCHRC \$61.02
Please Make Checks Payable To: Baltimore County

Cashier Validation

receipt

Date: 11/14/92

93-162
(14)

04A0480056MCHRC \$61.02
Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Date: 12/14/92

Roscoe Phipps
1220 Back River Neck Road
Baltimore, Maryland 21221

RE:
CASE NUMBER: 93-162-SPH (Item 166)
W/S Back River Neck Road, 750' S of Bay Avenue
1220 Back River Neck Road
15th Election District - 5th Councilmanic
Petitioner(s): Roscoe Phipps
HEARING: MONDAY, JANUARY 4, 1993 at 10:00 a.m. in Room 118, Old Courthouse.

Dear Petitioner(s):

Please be advised that \$ 61.02 is due for advertising and posting of the above captioned property and hearing date.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING (if the ORDER SHALL NOT ISSUE, DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING).

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 105, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

[Signature]
ARNOLD JARLON
DIRECTOR

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

NOV. 30 1992 (410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-162-SPH (Item 166)
W/S Back River Neck Road, 750' S of Bay Avenue
1220 Back River Neck Road
15th Election District - 5th Councilmanic
Petitioner(s): Roscoe Phipps
HEARING: MONDAY, JANUARY 4, 1993 at 10:00 a.m. in Room 118, Old Courthouse.

Special Hearing to approve a non-conforming use and alterations to be at the rear of west side of existing building.

[Signature]
ARNOLD JARLON
DIRECTOR

cc: Roscoe Phipps
Andy Anderson

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

December 23, 1992 (410) 887-3353

Mr. Roscoe Phipps
1220 Back River Neck Road
Baltimore, MD 21221

RE: Case No. 93-162-SPH, Item No. 166
Petitioner: Roscoe Phipps
Petition for Special Hearing

Dear Mr. Phipps:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this 12th day of November 1992.

[Signature]
ARNOLD JARLON
DIRECTOR

Received By:
W. Carl Richards Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Roscoe Phipps
Petitioner's Attorney:

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Development Review Committee Response Form

Authorized signature: [Signature] Date: 11/30/92

Project Name	File Number	Waiver Number	Zoning Issue	Meeting Date
Gregg and Joyce Kroeger	164			11-23-92 NC
Baltimore Bar-B Que Management Inc.	165			Comment
Roscoe Phipps				NC
American Legion Dept. of MD	167			Comment
Cecelia Escalante	168			NC
Michael J. and Peggy L. Navarre	172			NC
Pulte Home Corporation	173			NC
Clinton and Erika Routh	174			NC
Goldenwood Associates	175			NC
Salvo Road Limited Partnership	177			Comment
Ronald R. and Janet Lee Gaspari	178			NC

COUNT 11

Richard M. Diette
DED DEPRM RP 155 11-9-92



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

Ms. Julie Winiarski
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: +166 (LJC)

Dear Ms. Winiarski:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration projects.

Please contact David Ramsey at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

David N. Ramsey 11/19/92
John Contestabile, Chief
Engineering Access Permits
Division

My telephone number is _____

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 585-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Rec'd 11/19/92

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: December 9, 1992

FROM: Ervin Mc Daniel, Chief
Office of Planning and Zoning
Development Review Section

SUBJECT: Petitions from Zoning Advisory Committee
(November 23, 1992 and December 7, 1992)

The Office of Planning and Zoning has no comments on the following petitions:

Rascoe Phipps, Item No. 166
Goldenwood Associates, Item No. 175
Preakness Silver Hill, Inc., Item No. 180
Timothy and Meredith Scott, Item No. 186
Beatry and Enrique Clausen, Item No. 189
Shirley and Ronda Swab, Item No. 190

If there should be any further questions or if this office can provide additional information, please contact Francis Morsey in the Office of Planning at 887-3211.

Prepared by: Francis Morsey

Division Chief: Ervin McDaniel

EMcD/FM:rdn

180.ZAC/ZAC1

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: 11/30/92

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: 11/23/92

ITEM NUMBER: 166

THE FIVE PARKING SPACES BACKING ONTO A MAJOR COUNTY ARTERIAL
MUST BE RELOCATED INTERNAL TO THE SITE.

Rahee J. Famili
Traffic Engineer II

RJF/lvd

Rec'd 11/30/92

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: December 4, 1992

FROM: J. Lawrence Pilson JLP/lms
Development Coordinator, DEPRM

SUBJECT: Zoning Item #166
1220 Back River Neck Road
Zoning Advisory Committee Meeting of November 23, 1992

The Department of Environmental Protection and Resource Management requests an extension for the review of the above referenced zoning item to determine whether the proposed development is in compliance with the Chesapeake Bay Critical Area Regulations. The applicant must have an approved Critical Area Findings by this Department for the development. The applicant may contact the Environmental Impact Review Division of the Department at 887-2904 for details.

LP:sp

BACKRIV/TXTSBP

Rec 12/16/92

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21204-5500

NOVEMBER 27, 1992

(410) 887-4500

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: ROSCOE PHIPPS

Location: #1220 BACK RIVER NECK ROAD

Item No.: + 166 (LJC) Zoning Agenda: NOVEMBER 23, 1992

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: John P. Keck Noted and
Approved
Planning Group
Special Inspection Division

Fire Prevention Bureau

JP/KEK

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

January 7, 1993

(410) 887-4386

Mr. Andy Anderson
1201 Keywood Court
Baltimore, Maryland 21222

RE: 1220 Back River Neck Road
Case No. 93-162-SPH
Roscoe Phipps

Dear Mr. Anderson:

This is to confirm the agreement reached at the public hearing for the above case on January 4, 1993. At that time, you submitted for consideration a site plan of the subject property, showing the existing improvements thereon, the square footage of the impervious acreage and other information relative to the proposed improvements and existing conditions on this property. Unfortunately, the site plan was not prepared nor approved by a licensed civil engineer or surveyor and, therefore, not sealed by either of those individuals. In that all plans must be sealed under County regulations, I am unable to issue any decision on the Petition for Special Hearing which has been filed, until a sealed plan is submitted. You advised at the hearing that you will be able to obtain such a plan and would submit same to me for consideration, shortly.

Under the circumstances, I will hold this file in abeyance, pending receipt of the sealed plan. Kindly be advised that no decision can be issued on the Petition until that plan is received.

Very truly yours,

Lawrence E. Schmidt

LES:smn
cc: Mr. Roscoe Phipps
1120 Back River Neck Road
Baltimore, Maryland 21221

Not Sealed -
Mr. Anderson
submitted sealed
plans on 1/17/93
LES

93-162-SPH 1-4-93

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: December 29, 1992

FROM: J. Lawrence Pilson JLP/lms
Development Coordinator, DEPRM

SUBJECT: Zoning Item #166
1220 Back River Neck Road
Zoning Advisory Committee Meeting of November 23, 1992

The Department of Environmental Protection and Resource Management requests an extension for the review of the above referenced zoning item to determine whether the proposed development is in compliance with the Chesapeake Bay Critical Area Regulations. The applicant must have an approved Critical Area Findings by this Department for the development. The applicant may contact the Environmental Impact Review Division of the Department at 887-2904 for details.

An inspection of the septic System must be conducted by this office prior to approval of building permit.

LP:sp

BACKRIV/TXTSBP

